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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF QWEST  
CORPORATIONS COMPLIANCE WITH  
SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S MOTION TO RECONSIDER  
PROCEDURAL ORDER**

Qwest Corporation ("Qwest") respectfully moves for reconsideration of the Procedural Order issued on November 7, 2002 (the "Procedural Order"). While Qwest disagrees with many aspects of the Procedural Order, Qwest is not asking for reconsideration of the entire order. Rather, Qwest asks that only one aspect of the Procedural Order be changed – the requirement on page 6 that Phase A of the Section 252(e) investigation be concluded prior to resolution of the public interest portion of the Section 271 case.

Because of the importance of this issue to Qwest and the citizens of Arizona, and because of the serious impact of this aspect of the Procedural Order, Qwest asks for oral argument on this motion.

By filing this motion, Qwest is not challenging the Commission's ability to investigate all relevant issues in the Section 252(e) proceeding. Qwest is only asking that the Section 271 case

be allowed to proceed, without waiting for the Section 252 proceeding to conclude. The Section 271 case has been pending for almost four years, and the Procedural Order will most likely add an additional six months to the process. After all of the expense and effort that the parties have put into the Section 271 case, and the clear benefits that consumers will reap when the Section 271 case is concluded, such a delay is clearly not in the public interest.

#### **1. PROCEDURE IN THE SECTION 271 CASE**

Qwest first filed its Section 271 application on February 8, 1999. The OSS test lasted for more than two years – the first workshop to discuss test design was held in September, 1999, and Cap-Gemini's Final Report was issued on December 21, 2001, almost a year ago. Qwest has spent almost \$70 Million on Arizona test vendors and facilitators to assist the Commission Staff.

The amount of review that has taken place in the Section 271 case is extraordinary. The Commission conducted more than 40 initial and follow-up workshops, covering more than 100 days. Before the OSS test began, the Commission conducted seven workshops on test and performance measurement design. While the OSS test was proceeding, the parties participated in more than 50 TAG meetings to discuss testing issues. Cap-Gemini, Ernst & Young issued numerous draft reports, and the Commission conducted nine workshops to consider test results.

The Section 252(e) case intersects with the extensive Section 271 review in one way – the claim of some parties that Eschelon and McLeod were precluded by agreements with Qwest from raising certain issues in the Section 271 case. Any potential prejudice in the Section 271 case has now been addressed by the workshop conducted by the Staff more than four months ago that specifically allowed those parties to bring forth any evidence or issues they felt precluded from raising earlier.

At this point, everything in the Section 271 case is ready for Commission decision. The OSS Final Report is almost a year old, and the last workshop on public interest and Section 272 took place more than a year ago. The Staff has issued reports on all aspects of Section 271, and the Hearing Division has issued draft orders on those reports. The only remaining Section 271 deliverable is the Staff's report on the special workshop for McLeod and Eschelon, which should be issued any day (the workshop was held more than four months ago). Once that report is issued, every aspect of Section 271 will be ready for Commission decision.

## **2. DELAY RESULTING FROM THE PROCEDURAL ORDER**

The requirement on page 6 of the Procedural Order that Phase A of the Section 252(e) investigation be completed before the public interest phase of the Section 271 case is considered by the Commission will result in a delay of six months in the Section 271 case.

The Procedural Order contemplates a hearing commencing on January 29, 2003. Assuming that the post-hearing process is consistent with Arizona practice, post-hearing briefs will be filed sometime in mid to late February, and the Hearing Division will not issue a draft order until the end of March, 2003. That draft order will then be subject to a 10 day comment process, and the issue may at the earliest be considered by the Commission in mid-to-late April. Then, presumably, the parties can incorporate the findings from that proceeding in their comments on public interest in Section 271. If everything proceeds as quickly as possible, without delay, the Section 271 case may be completed in May – more than four years after Qwest filed its application and a year-and-a-half after Cap Gemini issued its Final Report on OSS.

### 3. HARM TO CONSUMERS

Such a delay is not in the best interest of Arizona consumers. As Qwest demonstrated in its public interest testimony, consumers in New York achieved benefits of between \$46 and 120 Million annually when Verizon was granted 271 relief. (*See* Rebuttal Testimony of David L. Teitzel, filed May 29, 2001 at 28). Arizona consumers will see similar savings when Qwest is granted 271 relief, and the delay caused by the Procedural Order could cost Arizona consumers tens of millions of dollars.

Finally, it is important to note no other commission in Qwest's region has found it necessary to hold up review of Section 271 issues because of the 252(e) issues. Eleven of the fourteen states in Qwest' region have concluded that Qwest meets all requirements of Section 271, and it is anticipated that South Dakota will issue a final order in the near future. In Qwest's 271 case in Minnesota, all hearings have completed, the parties have briefed all issues, and all issues are before the ALJ for a draft order for Commission consideration.

As a final point, the DOJ and several other state commissions have considered the effect of these same agreements on Section 271 proceedings and found that a lack of participation by certain CLECs did not significantly impact the results of the Section 271 proceedings. For example, in its evaluation, the DOJ stated that "the fact that certain CLECs did not participate does not appear to have had a significant impact on the result."<sup>1</sup>

After considering evidence presented at *en banc* workshops, the Colorado Public Utilities Commission squarely addressed the issue in its comments supporting Qwest's Section 271 application for authority in Colorado:

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<sup>1</sup> Evaluation of the United States Department of Justice, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, WC Docket No. 02-148 (July 23, 2002) at 5.

In a “but for” world, the potential impact of CLEC nonparticipation in the collaborative process is, at worst, close to nil. Smaller CLECs have elected to avoid the § 271 process altogether for a variety of reasons. Several CLECs have consistently participated, and others have participated when and as it was in their best interests to do so. The vast majority of impasse issues in Colorado have similarly been presented to the multistate facilitator, the Washington Commission, and the Arizona [Commission] for resolution. At the end of the day, no SGAT provisions would be worded differently, prices would not be adjusted, and impasse issue resolutions would not be modified. Such certainty is the incremental benefit of holding open, exhaustive § 271 proceedings.<sup>2</sup>

The Washington Utilities and Transportation Commission similarly rejected the notion that Qwest’s settlement agreements raise issues relating to a Section 271 proceeding in its comments supporting Qwest’s Section 271 application for authority in Washington:

There will always be complaints about Qwest’s behavior, competitive or anti-competitive, and this Commission has resolved and will continue to resolve those complaints. The issue here is whether there is anything that is sufficient to delay or give pause to our review of an application by Qwest under section 271. We do not find the evidence presented by the parties, individually or collectively, sufficiently unusual or disturbing to preclude a finding that an application would be in the public interest.<sup>3</sup>

## CONCLUSION

In short, there is no reason to further delay Commission consideration of the remaining issues in the Section 271 case. That case has been pending for almost four years, and the Commission has conducted extensive proceedings that have fully developed the factual record.

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<sup>2</sup> Evaluation of the Colorado Public Utilities Commission, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, WC Docket No. 02-148 (July 2, 2002) at 64-65.

<sup>3</sup> Comments of the Washington Utilities and Transportation Commission, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming*, WC Docket No. 02-189 (July 26, 2002) at 32, quoting WUTC’s 39<sup>th</sup> Supplemental Order ¶ 331.

Any possible issue regarding what may have happened had Eschelon and McLeod participated more fully has been resolved by the workshop in July, the sole purpose of which was to allow McLeod and Eschelon to present any additional issues or evidence. The parties have expended substantial effort and expense over the last four years developing the 271 record – Qwest alone has spent almost \$70 Million on test vendors and 271 facilitators in Arizona.

Unless it is amended, the Procedural Order will result in a delay of at least six months in the resolution of the Section 271 case, which has already been on hold since June because of the Section 252 issues. Such a delay could cost Arizona consumers tens of millions of dollars. This additional delay is completely unreasonable and unnecessary, and Qwest would not be meeting its obligations to its shareholders and Arizona consumers if it did not explore any and all possible options to avoid such unreasonable delay.

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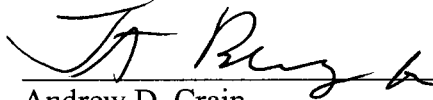
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For all of the forgoing reasons, Qwest respectfully requests that the Procedural Order of November 7, 2002 be amended to allow the Section 271 case to conclude without waiting for the conclusion of Phase A of the Section 252(e) proceeding.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of November, 2002.



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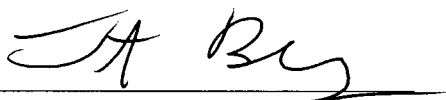
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